



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

JUDICIAL REVIEW CASE NO. 36 OF 2016

JOSPHAT M'AMBAU M'MURUYU EXPARTE APPLICANT

VERSUS

THE DISTRICT ADJUDICATION AND SETTLEMENT OFFICER1ST RESPONDENT

THE ATTORNEY GENERAL2ND RESPONDENT

JOSEPH MURURU MBOGOINTERESTED PARTY

JUDGMENT

1. Vide the notice of motion filed on 4.1.2017, the ex-parte Applicant is seeking for orders of Judicial Review in form of certiorari to call up the award made on 21.11.2016 in Ankamia Adjudication section objection no. 1999 for quashing. Earlier on 6.12.2016, the ex-parte applicant had obtained leave to bring forth the judicial Review suit where the leave was to operate as a stay of execution of the aforementioned award.

2. The ex-parte applicant's case is contained in his verifying affidavit in support of the chamber summons filed on 20.11.2016 and the statement of facts. The interested party has opposed the suit vide his replying affidavit filed on 9.7.2018. The respondents did not file any response despite the fact that they were given ample time to do so.

3. The case was heard by way of filing written submissions. Again, only the ex-parte applicant and the interested party complied with this direction.

Case for Ex-parte Applicant

4. The ex-parte applicant is claiming entitlement to the suit land, having inherited the same from his father. He therefore filed a suit before the 1st respondent in 2014 so that he could be registered as the owner of the land. The case was then partially heard by a District land Adjudication and Settlement Officer (DLASO), known as Mworira who was transferred before he could finalize the hearing of the case. The DLASO who took over the matter heard the case afresh and gave a ruling on notice.

5. One of the grounds cited by the ex-parte applicant in filing this suit is that he was not notified as to when the ruling was to be delivered. He only heard about the same from a Good Samaritan. Another ground is that the DLASO lacked jurisdiction to hear the case as he did not involve a committee. The ex-parte applicant also states that the DLASO did not follow due process before arriving at the decision and that he showed open bias. Finally, the ex-parte applicant states that 1st respondent failed to hear his (ex-parte applicant's), witnesses.

Case for the interested party.

6. The interested party is also claiming entitlement to the suit land averring that he inherited the same from his own father.

7. He avers that the ex-parte applicant had no capacity to institute the objection case no. 1999 in 2014 before the DLASO as he (Applicant) had no letters of administration in respect of the estate of his father. The interested party also avers that during the hearing of the objection case, the ex-parte applicant did testify and his witness, his own brother called Naman Maitha M'Muruyu also testified.

8. The interested party contends that the ex-parte applicant was aware of the date of delivery of the judgment as he has failed to state the Good Samaritan who informed him about the case. He further contends that the consent issued was defective as it was for filing an ordinary suit and not Judicial Review.

9. Finally the interested party has averred that there is no evidence adduced to demonstrate any bias on the part of the DLASO or committee

members.

Determination

10. I have considered the arguments advanced by the parties through the filed affidavits and submissions.

11. I find that at the heart of the dispute is the claim for ownership of the suit land, whereby each party is claiming that they inherited the land from their father. However, this being a Judicial Review matter, it is not concerned with the merits of the decision. It can only consider the decision making process.

12. In **Republic Vs. Kenya Revenue Authority Exparte Yaya Towers Limited (2008) eKLR**, it was held that; *“The remedy of judicial review is concerned with reviewing not the merits of the decision of which the application for judicial review is made, but the decision-making process itself. It is important to remember in such case that the purpose of the remedy of judicial review is to ensure that the individual is given fair treatment by the authority to which he/she has been subjected....”*.

13. In **Municipal Council of Mombasa vs. Republic & Umoja Consultants Ltd Civil Appeal No. 185 of 2001** the Court of Appeal held that:

“Judicial review is concerned with the decision making process, not with the merits of the decision itself: the Court would concern itself with such issues as to whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision the decision maker took into account relevant matters or did take into account irrelevant matters...The court should not act as a Court of Appeal over the decider which would involve going into the merits of the decision itself-such as whether there was or there was not sufficient evidence to support the decision.”

14. This court cannot therefore determine the issue as to who is the rightful owner of the suit land. The issues for determination are;

1. Whether objection proceedings in case no. 1999/14 were a nullity for want of letters of administration on the part of the ex-parte Applicant.
2. Whether the consent was defective.
3. Were the proceedings before the DLASO a nullity for want of committee?
4. Was the ex-parte applicant denied an opportunity to be heard?
5. Did the 1st respondent fail to follow due process
6. Was the 1st Respondent biased?

Letters of Administration

15. The interested party has argued that the ex-parte applicant needed the grant in order to institute the proceedings before the DLASO. However the statutes dealing with land adjudication (the Land Consolidation Act and Land Adjudication Act) allow any claimant to lodge their complaint. See section 13 of both statutes as well the case of **Rose Kanini M'Atheru & another vs DLASO & others, Meru Judicial Review case No. 11 of 2017**.

Was the consent defective?

16. The interested party has averred that the consent given to the ex-parte applicant was in respect of an ordinary suit and was not meant for Judicial Review cases. This argument lacks any legal basis since neither section 8 of the Land Consolidation Act, nor section 30 of the Land Adjudication Act makes special provision for consents in respect of Judicial Review matters.

Were the proceedings before the DLASO wanting for lack of a Committee?

17. The ex-parte-applicant has averred that the respondent failed to involve a committee contrary to provisions of cap 284 (Land Adjudication Act). In his submissions, applicant has again made reference to section 26 of cap 284. The said section stipulates that:

“ (1) Any person named in or affected by the adjudication register who considers it to be incorrect or incomplete in any respect may, within sixty days of the date upon which the notice of completion of the adjudication register is published, object to the adjudication officer in writing, saying in what respect he considers the adjudication register to be incorrect or incomplete.

(2) The adjudication officer shall consider any objection made to him under subsection (1) of this section, and after such further consultation and inquiries as he thinks fit he shall determine the objection.”

18. The legal position is that the DLASO is not required to hear the case with aid of a committee under cap 284. The requirement applies when proceedings are under cap 283 (Land Consolidation Act) – see **Peter Kimandiu vs DLASO & 4 others civil Appeal no. 28 of 2015.**

Opportunity to be heard

19. The Ex-parte applicant states that his witnesses were not given an opportunity to testify. However, going by the proceedings before the DLASO, the witness availed by the ex-parte applicant, one Naman Maitha M’Muruyu did testify.

Due process

20. The ex-parte applicant has stated that he was not notified of the date of the ruling. He only heard about the same. The process of notifying the parties about the ruling is not captured in the decision. The ex-parte applicant was absent on 21.11.2016 when the ruling was delivered. However, applicant was already filing this suit 7 days later (by 28.11.2016 when the chamber summons was filed). It follows that the ex-parte applicant was aware of the decision in good time, and was in a position to take any appropriate step.

Was the 1st respondent biased?

21. The ex-parte applicant has not demonstrated how the DLASO was biased. This is but a mere allegation.

22. The upshot of my findings are that I find no merits in the Judicial Review motion dated 14.12.2016 which I now dismiss with costs to the interested party. The stay orders given on 6.12 2016 are hereby discharged.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 28th NOVEMBER, 2018 IN THE PRESENCE OF:-

C/A: Kananu

Mugo holding brief for Kimathi I. for Exparte applicant

HON. LUCY. N. MBUGUA

ELC JUDGE